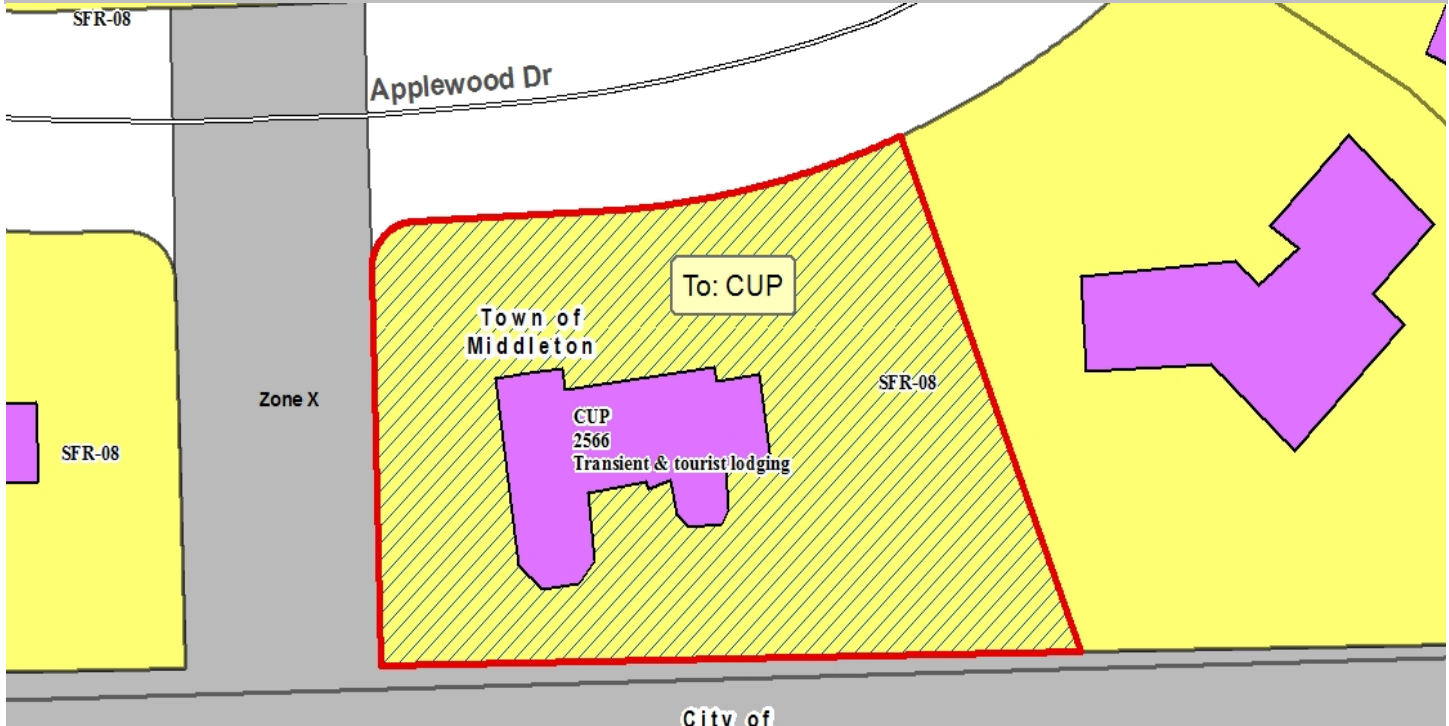


Staff Report  Zoning and Land Regulation Committee	<i>Public Hearing:</i> March 28, 2023		CUP 02585
	<i>Zoning Amendment Requested:</i> TO CUP: Transient or tourist lodging (short-term rental)		<i>Town/Section:</i> MIDDLETON, Section 27
	<i>Size:</i> 0.71 Acres	<i>Survey Required.</i>	<i>Applicant</i> CASEY AND MELISSA HELBACH
	<i>Reason for the request:</i> Transient or tourist lodging (short-term rental)		<i>Address:</i> 6993 APPLEWOOD DRIVE



DESCRIPTION: Casey and Melissa Helbach request renewal of their conditional use permit (CUP) for “transient or tourist lodging”, to rent out their home as a short-term vacation rental, with some modifications. The initial CUP ([CUP #2566](#)) was approved in 2022 and is set to expire on July 12, 2023 unless a new CUP is obtained. The changes requested are:

- Allowing a minimum 4-day guest stay versus 5 days as previously approved
- Extending the renewal process to every 5 years versus every 1 year as previously approved

OBSERVATIONS/ FACTUAL INFORMATION: Existing use of the less-than-1-acre property is residential. Neighboring land uses are residential on most sides (in the Town of Middleton) and agricultural (in the City of Madison) to the south. The property is located in the Applewood Hill residential subdivision, which consists of 43 lots.

Transient or tourist lodging is listed as an allowable conditional use in the SFR-08 zoning district. State statutes limit local regulation of short term rentals that are offered for 7-29 days. Local governments may require a permit to be obtained, and can regulate proposals that would involve rental periods shorter than 7 days. For rental periods of 7-29 days, local governments can require a permit, but may only limit rentals to no less than 180 days (either consecutive or non-consecutive) in any consecutive 365 day period. The Town of Middleton has not enacted a licensing ordinance for short-term rentals. The applicants are proposing rental periods of less than 7 days.

RESOURCE PROTECTION: There are no resource protection corridors on or within 300 feet of the property.

COMPREHENSIVE PLAN: The property is located in the town's residential planning area. There are no specific policies in the plan addressing transient lodging. The property is also in the area designated, per the intergovernmental agreement, to eventually go into the City of Madison. The proposal appears consistent with the Town and County Comprehensive Plans. (For questions about the town plan, contact Senior Planner Curt Kodl at (608) 266-4183 or kodl@countyofdane.com)

CONDITIONAL USE PERMIT DECISION MAKING: "Conditional uses" are those land uses which, because of unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review.

Prior to granting or denying a conditional use, the zoning committee shall make findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the standards required to obtain a conditional use permit. Below is the list of the applicable standards from Section 10.101(7)(d) of the Zoning Code, and a summary of the relevant facts including the applicant's testimony with regards to meeting the standards.

1. *That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.*

All short term rentals must be [licensed](#) through Public Health Madison & Dane County (PHMDC) and inspected annually to verify the operation meets all requirements of Wisconsin law related to general public health. The applicant has obtained a PHMDC license.

The CUP application describes the proposed rental operations plan and house rules. The applicants state they will manage the property, will continue to live in the home, that they will provide their contact information to their neighbors, that there is no planned construction, and that there will be no outdoor signage, no outdoor storage, and no outdoor activities on site (though guests would have access to the back yard).

2. *That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.*

The owners indicate that off-street parking is provided and required for tenants, and rental rules stipulate no parties, no events, no large gatherings, no smoking, no animals, minimum age requirement of 25 years to book the rental, and quiet hours from 10:00pm to 8:00am. The applicant has agreed to limit the number of guests to a maximum of eight adults at a time.

Some or all of these measures were made into conditions of approval for the original CUP, see staff recommendations below. For example, limits on the number of guests and establishing quiet hours are commonly used to control noise, which is a common concern that arises with short-term rental proposals.

3. *That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.*

This property and most of the surrounding properties are already developed as single-family residential lots, and no exterior changes to the property are proposed in association with the proposed conditional use. The lands to the south are undeveloped; however, the proposal is not expected to impede the development of that land.

4. *That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.*

The utilities, access roads, drainage, and other improvements needed for the proposed use are comparable to those necessary for a single-family house that is not used for short-term rentals. According to permitting records and filed documentation, the septic system serving the property is sized for 4 bedrooms / 8 adults. Dane County Environmental Health staff indicate that the design capacity of the existing system is based on residential code (150 gallons/day, or 2 adults/ bedroom). If the applicant wishes to offer rental of the residence for more than 8 adults, the existing system would need to be evaluated by a licensed professional and upgraded to meet applicable code standards.

5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Off street parking is provided for the property by an existing driveway and garage. No changes are proposed. The applicants state that they provide garage parking for 3 vehicles, that they will require guests to park off-street, and that they will limit the number of guest vehicles to 6.

6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

The proposed use conforms to the applicable regulations of the SFR-08 zoning district. Transient or tourist lodging is listed as an allowable conditional use in the SFR-08 zoning district.

7. That the conditional use is consistent with the adopted town and county comprehensive plans.

As noted above, the proposal appears consistent with the Town and County Comprehensive Plans.

8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).

Not applicable.

POTENTIAL NUISANCES ASSOCIATED WITH THE CONDITIONAL USE: The potential nuisances that pertain to short-term rentals most likely involve noise, vehicle traffic, and sanitary waste management. The applicant's CUP application addresses how these potential nuisances are handled, as noted above.

Potential conditions of approval specific to this CUP can be developed after public input and deliberation by the ZLR Committee. Under Dane County Zoning Ordinance section 10.103, there are no other special requirements for short-term rental operations.

TOWN ACTION: On March 20, 2023 the Town Board approved the CUP with conditions #1-26 listed below.

Staff notes that in the Town's new approval, the CUP renewal period would remain at 1 year. Condition #23 (regarding providing contact information to others) is a new requirement, and condition #24 (requiring a minimum 5 night rental period) were modified from the previous/existing CUP based on neighbors' concerns. The existing CUP sets a minimum stay of 5 days; the Town Board indicated their original intent was to require 5 nights, not 5 days. The effect of this new decision would technically be to extend the minimum stay requirement, while the applicants are requesting a reduction.

STAFF RECOMMENDATION: According to Town staff, the Town of Middleton received public comments for this petition indicating that the applicants have violated the terms of their current CUP. The county has also received comments expressing concern about the proposed CUP extension and the requested modifications. However, neither the Town nor County have received any complaints in the past several months for the current short-term rental activities, so there is no documented violation of the current permit.

Note that the current CUP 2566 already provides that: "Failure to comply with any imposed conditions, or to pay reasonable Town/County costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit. *The holder of a conditional use permit shall be given reasonable opportunity to correct any violations prior to the revocation.*"

Among the public comments received, David Huntsman expressed concerns that the applicants have not complied with the requirements of the current CUP, specifically condition #22 that "The owner, or their designated emergency contact person, be available within one (1) hour to address any problems." Also concerns that the shortened minimum stay would draw more "recreational" clientele.

Staff believes the applicant has provided sufficient evidence to mitigate the concerns. This includes the maximum occupancy of 8 adults, the provision of off-street parking and a limit on number of vehicles, and other rental terms (e.g., minimum guest booking periods, quiet hours). The proposal complies with the allowances provided in state law and the zoning ordinance. In addition, the suggested conditions below are intended to ensure the proposal meets the required standards for approval of a CUP.

Staff recommends postponement at this time, due to public opposition per the ZLR Committee's adopted rules and procedures.

MARCH 28TH ZLR MEETING: At the March 28th meeting, the ZLR Committee postponed action on the petition due to public opposition. At the hearing, one neighbor raised concerns with not having the Helbachs' contact information, and indicated that the rental activity was originally presented to the town with a focus on drawing "specialty" or "business" clientele. Melissa Helbach indicated she had no objection to providing the information, nor to most of the conditions imposed by the town. However she did object to two of the town's conditions: condition #8 setting a one-year expiration date on the CUP and condition #25 requiring a minimum five-night stay for each rental.

STAFF UPDATE (4/13/23): Staff believes that, based on the information provided by the applicant as summarized above, as well as the conditions of approval approved by the Town of Middleton, the proposal meets the applicable CUP standards. However, because the applicant objected to two of the town's conditions, staff sent a letter to the Town of Middleton requesting more information on what substantial evidence was used as a basis for conditions #8 and #25.

On April 12, 2023 the Town responded with a letter explaining the basis for its conditions. The Town Board felt that a one-year renewal requirement is appropriate based on the concerns expressed by neighbors regarding the operation at the Town's public hearing. Secondly, the Town Board felt that a five-night minimum stay requirement is appropriate based on the neighbors' concerns, and because in 2022 for their initial CUP the Helbachs represented to the Town that they sought to attract business travelers with stays geared toward a Sunday check-in and Friday check-out.

For the current CUP request, the Helbachs have not indicated that they still seek to target business travelers on a Sunday-to-Friday stay schedule. Conversely, the applicants indicated that they have had difficulty renting the property due to the minimum 5-day stay and this was the basis for their request to shorten the stay length to 4 days. In recent days, Melissa Helbach reported that she has had contact with the Applewood HOA President and has shared personal contact information with them, and that she does not object to the one-year renewal period requirement.

The minimum 5-night stay requirement is still in contention; however, under the Dane County Zoning Code s. 10.101(7) town boards may act on CUPs and may impose conditions as part of their approval that they find necessary to meet the 8 standards for approval in s. 10.101(7)(d)1. The ordinance does not outline a process for resolving contested conditions, except that anyone aggrieved by a CUP approval or denial may appeal to Circuit Court.

Staff recommends that the ZLR Committee makes a finding of fact as to whether the proposal meets the CUP standards, and we recommend approval with the conditions listed below, which reflect the Town of Middleton's approval.

CUP 2585 Potential Conditions of Approval

1. The Town finds that the proposal meets the general standards for conditional use permits per Dane County Ordinances 10.101(7)(d)1.
2. The Town finds that the proposed conditional use is consistent with the adopted Town Comprehensive Plan.
3. The CUP is granted subject to all standard conditions specified in Dane County Zoning Ordinance Section 10.101(7)(d)2, as applicable.
4. This conditional use permit shall expire in the event the property is sold or transferred to another owner. Continuation or extension of an expired conditional use requires re-application and approval by the Town Board and Dane County.
5. The applicant shall comply with all licensing and permitting requirements for short-term rentals.
6. Landowner will apply for, obtain and maintain an appropriate transient or tourist lodging rental license from Madison/Dane County Department of Public Health.
7. The rental shall be limited to 8 overnight guests.
8. This Conditional Use Permit shall expire one (1) year after the effective date. Landowner may renew the CUP by successfully obtaining a new CUP prior to the expiration date.
9. The maximum number of allowable rental days within a 365-day period is 180 days. The landowner must notify the Town Clerk in writing when the first rental within a 365-day period begins.
10. Quiet hours shall be 10:00pm to 8:00am, all days of the week.

11. No more than 5 overnight vehicles shall be on the premises at any one time. All vehicles must be parked on paved driveway surfaces or inside the existing garage and maintain adequate access for emergency vehicles.
12. No pets allowed.
13. Any new outdoor lighting shall be downward directed, designed to minimize ambient spill and shall comply with all applicable requirements of the Town of Middleton.
14. Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
15. The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site.
16. The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation.
17. Failure to comply with any imposed conditions, or to pay reasonable Town/County costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit. The holder of a conditional use permit shall be given reasonable opportunity to correct any violations prior to the revocation.
18. If the transient or tourist lodging operation is abandoned for one year or more, this conditional use permit shall be terminated. Future re-establishment of an abandoned conditional use shall require approval of a new conditional use permit.
19. The operation of all-terrain vehicles, ATVs, and snowmobiles by occupants of the transient or tourist lodging operation shall be prohibited on the property.
20. Signage is prohibited.
21. Fireworks are prohibited.
22. The owner, or their designated emergency contact person, be available within one (1) hour to address any problems.
23. Emergency contact information shall be provided to the neighbors, Applewood Homeowners Association President, the Town of Middleton, and Dane County Zoning Division.
24. The owner or operator must provide the Town of Middleton Clerk with a copy of the current rental agreement no later than the date of issuance of the CUP. In the event the agreement is modified in any manner, the modified agreement must be provided to the Town of Middleton Clerk within ten (10) calendar days of the date the modified agreement is placed in use.
25. The rental period shall be a minimum of 5 nights.
26. Landowner will conduct a background check on any prospective renter.

Any questions about this petition or staff report please contact Rachel Holloway at (608) 266-9084 or holloway.rachel@countyofdane.com